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HOUSE BILL 565

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Ernest H. Chavez

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE GROUND WATER  
PROTECTION ACT TO PERMIT THE LEGISLATURE TO APPROPRIATE MONEY  
IN THE CORRECTIVE ACTION FUND TO THE STATE ROAD FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-6B-7 NMSA 1978 (being Laws 1990,  
Chapter 124, Section 7, as amended) is amended to read:

"74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION  
FOR EXPENDITURES.--

A. There is created the "corrective action fund".  
The fund is intended to provide for financial assurance  
coverage and shall be used by the department to the extent that  
revenues are available to take corrective action in response to  
a release, to pay for the costs of a minimum site assessment in  
excess of ten thousand dollars (\$10,000), to pay the state's

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1 share of federal leaking underground storage tank trust fund  
2 cleanup costs as required by the federal Resource Conservation  
3 and Recovery Act of 1976 and to make payments to or on behalf  
4 of owners and operators for corrective action taken in  
5 accordance with Section 74-6B-13 NMSA 1978. The legislature  
6 may appropriate up to thirty percent of the annual distribution  
7 to the fund pursuant to Section 7-1-6.25 NMSA 1978 to the  
8 ~~[department to match federal funds, for underground~~  
9 ~~contamination cleanup, and to address water needs]~~ state road  
10 fund. The owner or operator of a site shall not use the  
11 corrective action fund as evidence of financial assurance to  
12 satisfy claims of third parties.

13 B. The board, after recommendations from the  
14 storage tank committee, shall adopt rules for establishing  
15 priorities for corrective action at sites contaminated by  
16 storage tanks. The priorities for corrective action shall be  
17 based on public health, safety and welfare and environmental  
18 concerns. In adopting rules pursuant to this subsection, the  
19 board shall follow the procedures of Section 74-4-5 NMSA 1978.  
20 The provisions of that section relating to all other matters in  
21 connection with the adoption of rules shall apply. The  
22 department shall establish priority lists of sites in  
23 accordance with the rules adopted by the board.

24 C. The department shall make expenditures from the  
25 corrective action fund in accordance with rules adopted by the

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1 board or the secretary for corrective action taken by the  
2 state, owners or operators at sites contaminated by storage  
3 tanks; provided that:

4 (1) payments may be made only for corrective  
5 action taken by persons qualified by the department to perform  
6 the work pursuant to rules adopted by the board;

7 (2) no expenditures from the fund shall be  
8 paid to or on behalf of an owner or operator for corrective  
9 action, other than a minimum site assessment or sampling, if  
10 the corrective action is conducted by a person that is a  
11 subsidiary or parent of or that is otherwise affiliated with  
12 the owner or operator;

13 (3) expenditures shall be made by the  
14 department to perform corrective action, to pay for the costs  
15 of minimum site assessment in excess of ten thousand dollars  
16 (\$10,000) or to make payments to or on behalf of an owner or  
17 operator in accordance with Section 74-6B-13 NMSA 1978;

18 (4) any corrective action taken shall be taken  
19 at sites in the order of priority appearing on the priority  
20 lists, unless an emergency threat to public health, safety and  
21 welfare or to the environment exists;

22 (5) when available revenues are limited and  
23 the fund can no longer be approved as a financial  
24 responsibility mechanism, priorities for expenditures from the  
25 fund shall also be based on financial need as determined by

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1 rules adopted by the board; and

2 (6) corrective action involving remediation  
3 shall follow a competitive bidding procedure based on technical  
4 merit and cost effectiveness.

5 D. No expenditure from the corrective action fund  
6 shall be authorized for corrective action at sites owned or  
7 operated by the United States or any agency or instrumentality  
8 thereof.

9 E. Nothing in this section authorizes payments for  
10 the repair or replacement of a storage tank or equipment.

11 F. Nothing in this section authorizes payments or  
12 commitments for payments in excess of the funds available.

13 G. The board, by rule, may provide for a specific  
14 amount to be reserved in the fund for emergencies. The amount  
15 reserved may be expended by the department only for corrective  
16 action necessary when an emergency threat to public health,  
17 safety and welfare or to the environment exists.

18 H. Within sixty days after receipt of notification  
19 that the corrective action fund has become incapable of paying  
20 for assured corrective actions, the owner or operator shall  
21 obtain alternative financial assurance acceptable to the  
22 department."

23 Section 2. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2009.

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